IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/12/2002

CORAM

THE HON'BLE MR.JUSTICE N.V.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

TAX CASE NO.307 OF 1998 AND TAX CASE NO. 308 OF 1998
(Reference Nos.276 and 277 of 1998)

M/s. Sathappa Textilers (P) Ltd.,
Coimbatore. ... Applicant

-Vs-

The Commissioner of Income-tax
Coimbatore. ... Respondent

Prayer: Reference made to this Court in the statement of the case submitted by the Income Tax Appellate Tribunal, Madras 'B' Bench in R. A.Nos.474 and 475(MDS)/95 (I.T.A.Nos.469 and 470/Mds/87 for the assessment year 1982-83 and 1983-84.

!For Applicant : Mr.J.Narayanaswamy
for M/s.Subbaraya Aiyar.

For Respondent : Mrs.Pushya Sitharaman
Sr.Standing counsel for
Income-tax.

:JUDGMENT

K.RAVIRAJA PANDIAN,J.
Pursuant to the direction of this Court made in Tax Case Petition Nos.272 and 273 of 1996, the Income-tax Appellate Tribunal set out a case and referred the following questions for the opinion of this Court:
"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the lands held by the assessee had not been converted into stock in trade?
2. Whether on the facts and in the circumstances of the case the Tribunal was right in rejecting the alternate claim of the assessee regarding the computation of capital gains on transfer of lands?"

The assessment years are 1982-83 and 1983-84.
2. The facts as stated in the statement of case are as follows:
The assessee was a Private Limited Company engaged in textile

business. From the assessment year 1982-83, it claimed that it had started business in real estate by converting part of its vacant land into stock-in-trade to carry on the business of real estate. In order to prove the same, it was contended that a resolution to that effect was passed on 1.1.1981 and entries have been made in the books of account. It was also claimed that the proceedings of the resolution was recorded in the minutes, duly signed by the Chairman, that the minutes so recorded was filed with the Registrar of Companies on 11.1.1983, that as per the entries made in the books of account, the property alleged to have been converted into stock-in-trade was valued at the market value of Rs.35,90,000/- and recorded in the books of account. It was also claimed that during the relevant previous year an extent of 3 .58 acres of land was sold for the gross receipts of Rs.9,15,790/- and claimed a sum of Rs.10,24,260/- as business loss. Pending the assessment proceedings before the Assessing Officer, the assessee made an application to the

Inspecting Assistant Commissioner under Section 14 4A for appropriate direction. The Inspecting Assistant commissioner after hearing the assessee declined to give any direction as requested for.

3. The Assessing Officer after considering the material on record did not accept the claim of the assessee of conversion of land into stock-in-trade. The Assessing Officer found that the property, which was alleged to have been converted into stock-in-trade as per the resolution dated 1.1.1981 was in fact sold during the relevant previous year as per the agreements of sales entered into by the assessee in the years 1969 and 1970. It was further concluded by the Assessing Officer that the higher valuation of the property in question was made by the assessee in order to avoid capital gains tax. Thus, the Assessing Officer treated the transactions as sale of immovable property and computed long term capital gains. Likewise, for the assessment year, 1 983-84, the assessee claimed for allowances of Rs.56,960/- on the ground that the said amount was incurred by the assessee towards improvement of the land. That claim was also negatived by the Assessing Officer on the ground that the assessee did not sell any land in respect of which the said expenditure was incurred.

4. The assessee carried the matter in appeal to the Commissioner of Income-tax (Appeals), who accepted the claim of the assessee that the lands in question were converted into stock-in-trade by accepting the minutes dated 1.1.1981 and held that the agreements of sales entered by the assessee were not acted upon. By the said reasoning, the Commissioner of Income-tax (Appeals) set aside the assessment and remitted the matter back to the Assessing Officer to determine the business profit or loss of the transaction.

5. The revenue carried the matter on appeal to the Tribunal. The Tribunal concluded that the finding of the Commissioner of Income-tax (Appeals) are not based on facts; that the land in question which was alleged to have been converted into stock-in-trade were not at all in the assessee's possession as on the date of resolution on 1.1.1981 to convert the same into stock-in-trade. The properties were sold under various agreements in the years 1969 and 1970. Some of the agreement holders filed suits for specific

performance of the agreements. The sale deeds were executed pursuant to the agreements already entered into and also in discharge of the decree passed against the assessee. The Tribunal found that when the asse ssee was not in possession of the property in question, there is no question or possibility for the assessee converting the same into stock-in-trade. The Tribunal further found that the alleged conversion of the land into stock-intrade was not genuine. The Tribunal also rejected the minutes projected by the assessee in order to prove the conversion on the ground that the minutes so produced has been entered into a loose sheet of paper and it is only an after thought to avoid the liability of capital gains.

6. The alternative claim of the assessee that part of the consideration had gone into discharging the mortgage debt and therefore to that extent, the consideration paid by the purchaser, which went into in discharging mortgage debt has to be allowed as a deduction while computing the capital gain, has also been rejected by the Tribunal on the ground that there was absolutely no evidence to show that any consideration had gone into discharging the mortgage debt and on the contrary found that the property sold under various sale deeds were got released from the mortgage and then the sale deeds were executed. As against the order of Tribunal, the above reference was made.

7. It is the contention of the learned counsel for the assessee that by resolution dated 1.1.1981, it was decided to convert the land belonging to the Company at Tirupur and Kurichi as stock-in-trade of the business proposed to be carried on by them. In order to prove the same, the assessee filed copy of the minutes of the proceedings of the meeting of the Board of Directors held on 1.1.1981. That aspect of the matter has been totally brushed aside on the grounds that since the minutes book in original has not been produced

before the authority and the minutes were produced before the authorities in loose sheets. There is no legal necessity that the minutes must be recorded in the minutes book.

8. On the other hand, the learned counsel appearing for the revenue has submitted that there is absolutely no question of law involved in the present case. The only point to be decided in this case viz., whether there was any conversion of the land in question as stock-intrade is a pure question of fact. The fact finding authority has ultimately held that the so called conversion as claimed by the assessee of the land into stock-in-trade to be false. The Tribunal by cogent reason held that the assessee has not proved the conversion of land in question as stock-in-trade in respect of the relevant assessment years and submitted that there is no materials to interfere with the finding arrived at by the Tribunal.

9. We heard the arguments of the learned counsel on either side.

10. The only evidence that has been let in in order to prove the claim of the assessee that the land in question has been converted into stock-in-trade by the assessee is the resolution dated 1.1.1981. Section 193

of the Companies Act provides for "Minutes of proceedings of General meetings and of Board and other meetings", which contemplates that every Company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every Committee of the Board, to be entered in books kept for that purpose within thirty days of the conclusion of every such meeting with their pages consecutively numbered. Each page of every such book shall be initialed and signed and last page of the records of proceedings of each meeting in such books shall be dated and signed in the case of minutes of proceedings of meeting of Board or of a Committee thereof by the Chairman of the said meeting or the Chairman of the next succeeding meeting. In the case of a minutes of the proceedings of the general meeting by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of death or inability of that Chairman within that period by a Director duly authorised by the Board for that purpose. In no case, the minutes of the proceedings of the meeting shall be attached to any such book as aforesaid by pasting or otherwise. The minutes of each meeting shall contain a fair and correct summary of the proceedings. Hence, the Tribunal has recorded a finding that in view of the express provision under Section 193 of the Companies Act, the minutes dated 1.1.1981 produced in a loose sheet cannot be accepted. Even the Assessing Officer has given a finding that in spite of the opportunity given to the assessee, the minutes book was not produced. When the Inspector visited the business premises of the assessee on 29.12.1984 on the basis of an authorisation under Section 133A, the Chairman informed the Inspector that the resolutions were typed in loose sheets and kept with various other papers and it would take time to trace and locate the same. Ultimately, the minutes book produced was found to be totally blank by the assessing authority. Further, in the minutes in original recorded in loose sheets on 1.1.1981, produced before the assessing officer, it was found that apart from the Chairman of the assessee Company, who has signed the minutes, two other Directors were also present at the meeting, however they did not sign.

11. Further, the Tribunal also taken into consideration of the fact that as early as the year May, 1969 and December, 1970, the Company entered into several sale agreements in respect of the properties in question with several persons which are not consistent with minutes. Ultimately the Tribunal found on fact with the available material that the assessee's claim of conversion was not genuine. The Tribunal has also recorded a clear finding that the finding of the Commissioner of Income-tax (Appeals) that the agreements of sale entered into by the assessee with various persons have not been acted upon was not based on materials and in fact, against the contention of the assessee who claimed to have sold the properties under agreements at a lower price than the actual market value as on the date of sale. Further, the Tribunal has also found that the advertisement given by the counsel for the assessee on 8.9.1982 inviting purchasers for the sale of land in an extent of 357.74 cents with factory, shed, godown and other machines clearly showed that the assessee was intending to dispose of the entire business premises and was not doing any business in real estate. Taking into consideration of totality of these factual position, the Tribunal has rejected the minutes. The Certificate given by the Department under Section 230-A, which has also been shown as a proof on behalf of the assessee, has been negatived on the ground

that in the Certificate, it was only certified that there was no income-tax arrears on the part of the assessee and apart from that, the certificate cannot be used to prove that the land in question was converted into stock-in-trade of the business.

12. That apart, the Tribunal recorded a finding that there is no material to come to the conclusion as done by the Commissioner of Income-tax (Appeals) that the lands were divided into plots and thereafter sold. From the material records, the 31 sale deeds executed by assessee show that the lands were not sold in terms of plots, but in terms of extent over an extent of 357.74 cents. It is also found by the Tribunal that the assessee was not in possession of the land, which was sold during the relevant previous year. All those lands were sold under various agreements of sale and the purchasers were given possession in the years 1969 and 1970 itself. This factual position clinches the issue when the assessee was not in actual possession of the properties and the properties were given in possession of the agreement holders in the years 1969 and 1970 itself, there was no question of converting the land into stock-in-trade by passing a resolution in the year 1981.

13. Learned counsel for the assessee contended that even if the minutes produced by the assessee is ignored, the account books are sufficient to show that the land has been converted into stock-in-trade. In so far as the accounts are concerned for the assessment year ended 31.03.1981 the Chartered Accountant signed the balance sheet subsequently on 15.01.1982 and it was filed before the Income Tax Officer in May 1982 and the Tribunal therefore recorded a finding that the action of the assessee is in conformity with its action to cover up the liability of capital gain. We therefore hold that the finding of the appellate Tribunal that the alleged conversion of the capital into stock-in-trade by the resolution dated 1.1.1981 is not a genuine one is purely a finding of fact, especially when the said finding has been arrived at on the basis of materials on record. The Tribunal after considering of the relevant materials has recorded a finding that the alleged resolution dated 1.1.1981 was not a genuine one.

14. One other contention was also raised by the learned counsel for the assessee that for the assessment years 1982-83 and 1983-84 respectively for the previous year ended 31.03.1982 and 31.03.1983, the Tribunal not have gone into the question of the correctness of the resolution dated 1.1.1981, which fall in the previous year ended 31.03.19 81 i.e. for the earlier assessment year. We are also unable to accept the said submission as the lands were sold during the previous years and the assessee claimed on the basis of the resolution dated 1.1.1 981 that the lands were converted into stock-in-trade and hence it is necessary for the Appellate Tribunal to go into the question and determine same. Further, it is also relevant to mention here that the assessee has not produced any material before the authorities to show during the assessment proceedings for the assessment year 1981-82 that the assessee had produced the resolution dated 1.1.1981 and claimed the same as stock-in-trade. Hence, we are of the considered view that the alleged conversion of the land into stock-in-trade and the resolution dated 1.1.1981 are not true and only make believe documents and thus we answer question No.1 in the affirmative against the assessee and in favour of the revenue.

15. In respect of the alternative contention of the assessee that as most part of the sale consideration was paid for discharging the mortgage to the extent of payment made to South India Bank has to be treated as the cost of the land or expenditure in executing the sale deeds so as to take the said amount before computing the sale proceedings for capital gain. Here again, we are not able to accept the contention of the learned counsel for the reason that the Tribunal has recorded a categoric finding that the assessee did not produce any evidence to show that the sale consideration was appropriated by the mortgagee bank and further found that from the material filed by the assessee in the gift tax appeal that the mortgagee Bank has released 3.71 acres of vacant property in T.S.No.328, Tirupur town from security and thereby giving a free hand to the assessee for the disposal of the same. When the final fact finding authority has recorded a finding that there is no material to prove that the sale consideration has been paid for discharge of the mortgage amount, we have no material to go against that finding. Hence, the second question also has to be answered in the affirmative against the assessee and in favour of the revenue and we are answering as such. However, there is no order as to costs.

Index:Yes
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To
1. The Assistant Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090 (Five copies with records)

2.The Secretary,
Central Board of Direct Taxes,
New Delhi,

3.The Commissioner of Income Tax,
Coimbatore,

4. The Commissioner of Income Tax
(Appeals- V), Coimbatore,

5.The Income-tax Officer,
City Circle, I
Coimbatore.

((SCO LYRIX 6.1
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